

1 **Yee-Horn Shuai, Esq.**  
2 **SHUAI & ASSOCIATES**  
3 301 E. Colorado Blvd., Suite 514  
4 Pasadena, California 91101  
5 Tel. (626) 405-0348  
6 Fax (626) 405-0890  
7 Bar No. 104897  
8 E-mail: yhshuai@gmail.com  
9  
10 Attorney for John Tam, Jamie Yang,  
11 and Corey Fong

12 UNITED STATES DISTRICT COURT  
13  
14 NORTHERN DISTRICT OF CALIFORNIA  
15

16 ACTIVISION PUBLISHING, INC., a  
17 Delaware corporation,  
18  
19 Plaintiff,

20 vs.

21 JOHN TAM, an individual, JAMIE YANG, an  
22 individual, COREY FONG, an individual,  
23 DOUG KENNEDY, an individual, HONG YIP  
24 LOW, an individual, RAYMOND YOW, an  
25 individual, REVERB COMMUNICATIONS,  
26 INC., a California corporation, and THE ANT  
27 COMMANDOS, INC., a California  
28 corporation,

Defendants.

) Case No. C07-03536 MEJ

) JOHN TAM, COREY FONG AND JAMIE  
) YANG'S REPLY TO ALL DEFENDANTS'  
) OPPOSITION TO THEIR MOTION FOR  
) ORDER DETERMINING GOOD FAITH  
) SETTLEMENTS AND BARRING OF  
) FUTURE CLAIMS AGAINST SETTLING  
) PARTIES; MEMORANDUM OF POINTS  
) AND AUTHORITIES; DECLARATIONS OF  
) JOHN TAM, COREY FONG, JAMIE YANG  
) AND YEE-HORN SHUAI

) Complaint Filed: January 18, 2007

) Date: August 30, 2007

) Time: 10:00 AM

) Dept.: Courtroom B, 15<sup>th</sup> Floor

) Judge: Honorable Marie-Elena James


29 CONFIDENTIAL

30 CONTAINS MATERIALS DESIGNATED BY ACTIVISION AS CONFIDENTIAL SUBJECT  
31 TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED  
32 NOR ARE ITS CONTENTS TO BE DISPLAYED, REVEALED OR MADE PUBLIC,  
33 EXCEPT BY ORDER OF THE COURT.  
34  
35  
36  
37  
38

1 In response to the oppositions of defendants The Ant Commandors, Inc., Raymond Yow,  
2 Hong Lip Yow, Reverb Communications, Inc. and Doug Kennedy to their motion for good faith  
3 settlement determination, defendants John Tam, Corey Fong and Jamie Yang reply with the  
4 memorandum of points and authorities attached hereto.

5 Dated: August 16, 2007

SHUAI & ASSOCIATES

6  
7 

8 Yee-Horn Shuai, Attorney for Defendants John  
9 Tam, Jamie Yang, and Corey Fong  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## MEMORANDUM OF POINTS AND AUTHORITIES

## I

## STATEMENT OF FACTS

The above-entitled action arose out of alleged claims made by Plaintiff Activision Publishing, Inc. ("Activision") against former employees and defendants John Tam, Corey Fong and Jamie Yang (collectively "The Tam Defendants"), The Ant Commandos, Inc., Hong Lip Yow and Raymond Yow, (collectively "The TAC Defendants"), and Reverb Communications, Inc. And Doug Kennedy, (collectively "The Reverb Defendants"). Activision claimed that The Tam Defendants were working with Activision's competitor Defendant The Ant Commandos, Inc. ("TAC") and TAC's respective directors during their employment and allegedly misappropriated Activision's trade secret information.

Activision filed the complaint on January 18, 2007. On or about March 27, 2007, Activision and defendants John Tam and Corey Fong executed the Confidential Settlement Agreement in this matter, and entered into a Consent Judgment and Permanent Injunction. On or about April 11, 2007, Activision and Jamie Yang executed the Confidential Settlement Agreement in this matter, and entered into a Consent Judgment and Permanent Injunction.

Before the Tam Defendants reached the settlement with Activision, the Tam Defendants had invited The TAC Defendants and The Reverb Defendants to join in the negotiation with Activision to reach a global settlement. However, the TAC Defendants flatly rejected the idea, and the Reverb Defendants were not supportive of such an idea. The Tam Defendants were all salaried employees, i.e., hired hand living on salaries and not entrepreneurs. John Tam and Corey Fong have families to care for, and Jamie Yang has serious health problems. None of them could afford the attorneys' fees to litigate this matter. In fact, for the short period of time that they defended the instant action and the settlement payments, their savings were substantially depleted. The Tam Defendants had no choice but to accept whatever the lowest amounts that plaintiffs Activision would accept to settle this matter.

The TAC Defendants did not reach the settlement agreement with plaintiff Activision until June 25, 2007, which is about 3 months later than the settlements between the Tam

1 Defendants and Activision. This time, the TAC Defendants again refused the Reverb  
2 Defendants' proposal to jointly negotiate the settlement with Activision, despite the fact that the  
3 counsel for the Reverb Defendants had indicated to counsel for the TAC Defendants of such an  
4 desire, and that fact that Activision had told the counsel for TAC Defendants its willingness to  
5 settle with both the TAC Defendants and the Reverb Defendants for an amount that is only about  
6 \$75,000 more than the amount in the final settlement between the TAC Defendants and  
7 Activision. The TAC Defendants simply refused or failed to pass to the Reverb Defendants the  
8 global settlement offer made by Activision, and unilaterally entered into the settlement with  
9 Activision leaving the Reverb Defendants in the cold.

10 There is really no inconsistency between the statement in the former counsel Richard  
11 Cauley's declaration and the amount of the damages acknowledged in the CONFIDENTIAL  
12 SETTLEMENT AGREEMENTS. In the Settlement Agreements, the Tam Defendants merely  
13 ACKNOWLEDGED the damage claims of Activision without AGREEING to such claims.

14 The acknowledgment that the damages sustained by Activision to be in excess of  
15 \$750,000 is agreed to be kept confidential and will not have any evidentiary value and, thus, will  
16 not in any way help Activision in its action against the other defendants.

17 All of the Tam Defendants are living on wages and need to support their families. Their  
18 financial conditions are set forth in their declaration in support of this Reply.

19 The TAC Defendants and the Reverb Defendants have not proffered any evidence of  
20 collusion, fraud, or tortious conduct between the settler and the plaintiff aiming at making non-  
21 settling parties pay more than their fair share.

22 In the TAC Defendants' motion for good faith settlement determination, the TAC  
23 Defendants assert that, THE SETTLEMENT OF THE PARTIES WAS REACHED IN GOOD  
24 FAITH, BECAUSE THE SETTLING DEFENDANTS ARE PROVIDING THE PLAINTIFF  
25 WITH PAYMENT OF AN AMOUNT THAT IS FAIR CONSIDERING THE SIX FACTORS  
26 SET FORTH IN TECH-BUILT V. WOODWARD." (See TAC Defendants' Ps & As, P3, L25 to  
27 P7, L10.)

28 //////////////

## II

THIS COURT HAS AUTHORITY TO AND SHOULD MAKE A  
DETERMINATION THAT THE SETTLEMENT WAS MADE IN  
GOOD FAITH UNDER C.C.P. SECTION 877.6

In *Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal. 3d 488, 499 (1985), the court concluded that a trial court may inquire as to whether the amount of the settlement is within a reasonable "ballpark" range of the settling tortfeasor's proportional share of comparative liability for the alleged damages. This assessment is to be made based on the facts available at the time of settlement. The court outlined factors to be assessed in making the good faith determination as follows:

The intent and policies underlying § 877.5 require that a number of factors be taken into account, including a rough approximation of the plaintiff's total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found to have liability at trial.

Other relevant considerations include the financial condition and insurance policy limits of the settling defendants as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interest of non-settling defendants. Finally, practical considerations obviously required that the evaluation be made on the basis of information available at the time of settlement.

*Id.* at 499.

In the instant case, the facts clearly reflect that the settlement by the parties is in good faith and consistent with the considerations outlined in the *Tech-Bilt* decision.

The Tam Defendants wanted to reach settlement with Activision because they did not and do not have the financial ability to litigate this matter. They invited the TAC Defendants and the Reverb Defendants to join in the negotiation for a global settlement with Activision. Such



1 invitation was rejected by the TAC Defendants and unsupported by the Reverb Defendants.  
2 They had no choice but to proceed the settlement negotiation with Activision without the other  
3 defendants.

4 The Tam Defendants reached the settlement with Activision at a very early stage of the  
5 action. In fact, in less than 2 months after Activision's filing of the complaint, the Tam  
6 Defendants and Activision reached principal terms of the settlement. The settlement agreements  
7 were not signed until awhile later because it took a long time for the counsel to finalize and for  
8 the parties to execute the agreements and the consent judgments. The civil litigation system is  
9 designed to encourage settlement among the parties. The earlier the settlement is reached, the  
10 more savings there are of the costs to the parties, the court system and the society.

11 The acknowledgment of Activision's damages does not have any evidentiary value and  
12 thus will not in any way help Activision's action against any of the other defendants, i.e., the  
13 TAC Defendants and the Reverb Defendants. Therefore, such recitations in the confidential  
14 settlement agreements should not and cannot infer any collusion, fraud, or tortious conduct  
15 between the settler and the plaintiff aimed at making non-settling parties pay more than their fair  
16 share. In fact, at the time when the TAC Defendants reached and entered the settlement  
17 agreement with Activision, they did not know any of the terms and conditions of the settlement  
18 agreements between the Tam Defendants and Activision. That also means, the settlement  
19 between TAC Defendants and Activision was not affected in any way by the settlements between  
20 the Tam Defendants and Activision.

21 Had the counsel of the TAC Defendants not repeatedly threatened to seeking indemnity  
22 and contribution from the Tam Defendants, the Tam Defendants would not have filed the motion  
23 for good faith determination. Had the Tam Defendants not filed the motion for good faith  
24 determination, none of the other defendants would have known the terms and conditions of said  
25 settlement agreements.

26 The Tam Defendants have proffered additional evidence to show their current financial  
27 conditions. The financial conditions of the Tam Defendants clearly support their request for a  
28 good faith settlement determination. Defendant Jamie Yang used a big chunk of her little

1 savings to pay the \$17,500 in one installment in April 2007. Defendants John Tam and Corey  
2 Fong could not and cannot do so and have to make payments on an installment basis, i.e., \$333  
3 per month by John Tam and \$445 per month by Corey Fong. If any of them was going to  
4 continue this litigation, he/she would soon need to borrow money against the equity of his/her  
5 house increasing his/her monthly mortgage payments beyond his/her means. When his/her  
6 income is insufficient to meet all the debts, his/her house may go in default and be foreclosed.

7 Furthermore, none of the opposing defendants has proffered any evidence that this  
8 settlement was the result of collusion, fraud or tortious conduct against the non-settling  
9 defendants/cross-defendants. There is no evidence whatsoever that the agreement was based on  
10 anything other than an arms-length negotiation following investigation by all parties concerned.  
11 All the TAC Defendants and Reverb Defendants have clearly failed the burden of proof to show  
12 that the settlement between the Tam Defendants and Activision lacks good faith.

13 In the TAC Defendants' motion for good faith settlement determination, the TAC  
14 Defendants assert that, "THE SETTLEMENT OF THE PARTIES WAS REACHED IN GOOD  
15 FAITH, BECAUSE THE SETTLING DEFENDANTS ARE PROVIDING THE PLAINTIFF  
16 WITH PAYMENT OF AN AMOUNT THAT IS FAIR CONSIDERING THE SIX FACTORS  
17 SET FORTH IN TECH-BUILT V. WOODWARD." (See TAC Defendants' Ps & As, P3, L25 to  
18 P7, L10.) If the TAC Defendants assert that the settlement between them and Activision is  
19 FAIR, how could they argue that the settlement between the Tam Defendants and Activision is  
20 NOT FAIR or not in good faith?

21 Further, Code of Civil Procedure §§ 877 and 877.6(c) applies to those defendants who act  
22 in concert to cause an injury, and include joint and concurrent and successive tortfeasors. In  
23 *Turcon Construction, Inc. v. Norto-Valliers, Ltd.*, 139 Cal. App. 3d 280, 282 (1983) the court  
24 stated:

25 The clear policy of § 877.6(c) is to encourage settlement by  
26 providing finality to litigation for the settling tortfeasor. This  
27 policy applies with equal force to all tortfeasors joined in the single  
28 action regardless of whether their acts are successive or

1 contemporaneous.

2 III

3 CONCLUSION

4 Based on the foregoing, it is respectfully requested that the court order:

5 a) That the proposed settlements between the Tam Defendants and Activision are in  
6 good faith pursuant to Code of Civil Procedure § 877.6; and

7 b) That all future claims against each named party to this action for equitable  
8 comparative contribution or partial comparative indemnity, based on comparative negligence or  
9 comparative fault (including claims for implied contractual indemnity), be dismissed and are  
10 forever barred.

11 Dated: August 16, 2007

SHUAI & ASSOCIATES

12 

13 \_\_\_\_\_  
14 Yee-Horn Shuai, Attorney for Defendants John  
15 Tam, Jamie Yang, and Corey Fong  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28





1 I, John Tam, declare and say:

2 1. I am a defendant in the above captioned action. This declaration is made upon my  
3 own knowledge and if sworn as a witness, I can competently testify to the truth of the facts set  
4 forth herein.

5 2. As soon as Activision believed that Corey Fong, Jamie Yang and I were doing the  
6 things alleged in the complaint, it fired all of us. While unemployed, the lawyer bills were  
7 stacking up on all of us.

8 3. Corey Fong, Jamie Yang and I, through Mr. Cauley, had invited all the other  
9 defendants to jointly work out a universal settlement with Activision. However, such invitation  
10 was rejected by TAC, Hong Lip Yow and Raymond Yow, and Reverb Communications, Inc. and  
11 Doug Kennedy were not supportive of such an idea. We had no choice but to settle with  
12 Activision without them.

13 4. I have no idea if what Mr. Richard Cauley said in his declaration is correct, i.e.,  
14 Activision did not suffer any compensable injury. However, my understanding is that I would  
15 not be able to reach a settlement without acknowledging Activision's damages to be in excess of  
16 \$750,000, and that Mr. Richard Cauley was only able to change the word "agree" to  
17 "acknowledge", i.e., we did not agree but acknowledge that the damages caused to Activision  
18 were in excess of \$750,000.

19 5. In addition, my understanding is that the settlement agreements would be  
20 confidential and none of the parties is permitted to disclose the terms of the settlement  
21 agreement, and, thus, I believed that such acknowledgment of damages would not and could not  
22 be used by Activision as evidence against any of the other defendants.

23 6. I had my family to think of and really had no choice but to settle to get out of the  
24 legal situations, and to stop the legal bills from adding up. In fact, I had to borrow \$10,000 from  
25 my parents to pay the attorney's bills.

26 7. I and my wife currently have the following assets and income:

27 a. We have approximately \$10,000 in the bank accounts. The little cash we  
28 have will drastically change, if I have to further deal with the legal issues. Any more big hits

1 from legal bills or other things can quickly deplete the amount in my checking & savings  
2 account. I was informed that not only TAC, Hong Lip Yow and Raymond Yow filed the  
3 opposition to our motion, but also Reverb Communications, Inc. and Douglas Kennedy.

4 b. We own our own residence. The value of the house is approximately  
5 \$820,000 with a loan Balance of approximately \$500,000. The monthly mortgage payment is  
6 \$2,500.

7 c. I am still unemployed, and my family of four depends on my wife's  
8 monthly take home pay of \$4,700. With the kind of income, we need to support a family of 4  
9 (including two infants). If we have to take equity out of our house, this will raise our monthly  
10 payments and could potentially put myself and my family out on the streets.

11 8. My wife and I have borrowed significant funds from family to have cash on hand  
12 for mortgage bills etc. and still have the following debts:

13 a. Balance of approximately \$500,000 of home mortgage.

14 b. \$10,000 owed to my parents/

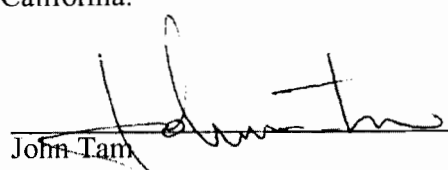
15 c. \$16,000 owed to Activision.

16 9. Our monthly expenses are: (a) \$2,500 for house mortgage , (b) \$333 for payment  
17 to Activision, (c) \$100 for health insurance, (d) \$580 for property taxes, (e) \$300 for utilities, and  
18 (f) at least \$700 for other overall living expenses, totaling at least \$4,513.

19 10. I did earned some shares of the RedOctane stock. I sold the stock and received  
20 approximately \$170,000 in June 2006, and we used the money to pay off our loans and also part  
21 of the home mortgage.

22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and corr

24 Executed on August 15, 2007, at Milpitas, California.

25  
26   
27 John Tam  
28



1 I, Corey Fong, declare and say:

2 1. I am a defendant in the above captioned action. This declaration is made upon my  
3 own knowledge and if sworn as a witness, I can competently testify to the truth of the facts set  
4 forth herein.

5 2. As soon as Activision believed that John Tam, Jamie Yang and I were doing the  
6 things alleged in the complaint, it fired all of us. While unemployed, the lawyer bills were  
7 stacking up on all of us.

8 3. John Tam, Jamie Yang and I, through Mr. Cauley, had invited all the other  
9 defendants to jointly work out a universal settlement with Activision. However, such invitation  
10 was rejected by TAC, Hong Lip Yow and Raymond Yow, and Reverb Communications, Inc. and  
11 Doug Kennedy were not supportive of such an idea. We had no choice but to settle with  
12 Activision without them.

13 4. I have no idea if what Mr. Richard Cauley said in his declaration is correct, i.e.,  
14 Activision did not suffer any compensable injury. However, my understanding is that I would  
15 not be able to reach a settlement without acknowledging Activision's damages to be in excess of  
16 \$750,000, and that Mr. Richard Cauley was only able to change the word "agree" to  
17 "acknowledge", i.e., we did not agree but acknowledge that the damages caused to Activision  
18 were in excess of \$750,000.

19 5. In addition, my understanding is that the settlement agreements would be  
20 confidential and none of the parties is permitted to disclose the terms of the settlement  
21 agreement, and, thus, I believed that such acknowledgment of damages would not and could not  
22 be used by Activision as evidence against any of the other defendants.

23 6. I had my family to think of and really had no choice but to settle to get out of the  
24 legal situations, and to stop the legal bills from adding up.

25 7. I applied for unemployment benefit about 2 months after Activision fired us, in an  
26 attempt to get some income for my family. However, Activision's VP of HR specifically went  
27 through the trouble of blocking my application for unemployment insurance benefits by telling  
28 the unemployment department that I do not deserve unemployment insurance because I was fired



1 for gross misconduct, knowing full well that I had a family to take care of. As the result, I did  
2 not receive any unemployment insurance benefit or other income during the 6 months that I was  
3 out of work.

4 8. I and my wife currently have the following assets and income:

5 a. We have approximately \$13,000 in the bank across checking and savings  
6 accounts. This will drastically change, if I have to further deal with the legal issues. Any more  
7 big hits from legal bills or other things can quickly deplete the amount in my checking & savings  
8 account. I was informed that not only TAC, Hong Lip Yow and Raymond Yow filed the  
9 opposition to our motion, but also Reverb Communications, Inc. and Douglas Kennedy.

10 b. We own our own residence. The value of the house is approximately  
11 \$550,000 with a loan Balance of approximately \$365,000. The monthly mortgage payment is  
12 \$2,031.

13 c. After months of unemployment, I finally found a new job and started work  
14 on June 22, 2007, but on a 90-day probation. My annual salary is \$80,000, and the take home  
15 pay approximately \$5,000 per month. With the kind of income, I need to support a family of 5  
16 plus one to come in October. If I have to take equity out of my house, this will raise our monthly  
17 payments and could potentially put myself and my family out on the streets, especially because  
18 my wife is pregnant with our 4th child due in October, and she has quit her job to stay home with  
19 the children.

20 9. My wife and/or I still have the following debts:

21 a. Balance of approximately \$365,000 of house mortgage.

22 b. \$16,000 owed to Activision.


23 c. Approximately \$1,600 on my Wells Fargo credit card.

24 10. My monthly expenses are: (a) \$2,031 for house mortgage , (b) \$445 for payment  
25 to Activision,(c) \$300 for health insurance, (d) approximately \$500 for property taxes, (e) \$40 for  
26 property insurance, (f) \$50 for preschool, (g) \$150 for auto insurance and (h) approximately  
27 \$1,400 for other overall living expenses, totaling at least \$ 4,916 a month.

11. I did receive 10,000 shares of the RedOctane stock. However, when I sold them in June 07, 2006, I received only about \$26,000 cash after taxes. The money was enough to pay only a tiny fraction of the attorneys' fees.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 10, 2007, at Foster City, California.

  
Corey Fong

1 **Yee-Horn Shuai, Esq.**  
2 **SHUAI & ASSOCIATES**  
3 301 E. Colorado Blvd., Suite 514  
4 Pasadena, California 91101  
5 Tel. (626) 405-0348  
6 Fax (626) 405-0890  
7 Bar No. 104897  
8 E-mail: yhshuai@gmail.com

9 Attorney for John Tam, Jamie Yang,  
10 and Corey Fong

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 ACTIVISION PUBLISHING, INC., a  
15 Delaware corporation,

16 Plaintiff,

17 vs.

18 JOHN TAM, an individual, JAMIE YANG, an  
19 individual, COREY FONG, an individual,  
20 DOUG KENNEDY, an individual, HONG YIP  
21 LOW, an individual, RAYMOND YOW, an  
22 individual, REVERB COMMUNICATIONS,  
23 INC., a California corporation, and THE ANT  
24 COMMANDOS, INC., a California  
25 corporation,

26 Defendants.  
27  
28

) Case No. C 07-03536 MEJ  
)  
)

) **CONFIDENTIAL AND SEALED**  
) **DECLARATION OF JAMIE YANG IN**  
) **SUPPORT OF DEFENDANTS JOHN TAM,**  
) **COREY FONG AND JAMIE YANG'S**  
) **REPLY TO ALL OTHER DEFENDANTS'**  
) **OPPOSITIONS TO THEIR MOTION FOR**  
) **ORDER DETERMINING GOOD FAITH**  
) **SETTLEMENT AND BARRING OF**  
) **FUTURE CLAIMS AGAINST SETTLING**  
) **PARTIES**  
)  
)  
)

29 CONFIDENTIAL

30 CONTAINS MATERIALS DESIGNATED BY ACTIVISION AS CONFIDENTIAL SUBJECT  
31 TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED  
32 NOR ARE ITS CONTENTS TO BE DISPLAYED, REVEALED OR MADE PUBLIC,  
33 EXCEPT BY ORDER OF THE COURT.  
34  
35  
36  
37  
38

1 I, Jamie Yang, declare and say:

2 1. I was a defendant in the above captioned action. This declaration is made upon  
3 my own knowledge and if sworn as a witness, I can competently testify to the truth of the facts  
4 set forth herein.

5 2. As soon as Activision believed that John Tam, Corey Fong and I were doing the  
6 things alleged in the complaint, it fired all of us. While unemployed, the lawyer bills were  
7 stacking up on all of us.

8 3. John Tam, Corey Fong and I, through Mr. Cauley, had invited all the other  
9 defendants to jointly work out a universal settlement with Activision. However, such invitation  
10 was rejected by TAC, Hong Lip Yow and Raymond Yow, and Reverb Communications, Inc. and  
11 Doug Kennedy were not supportive of such an idea. We had no choice but to settle with  
12 Activision without them.

13 4. I have no idea if what Mr. Richard Cauley said in his declaration is correct, i.e.,  
14 Activision did not suffer any compensable injury. However, my understanding is that I would  
15 not be able to reach a settlement without acknowledging Activision's damages to be in excess of  
16 \$750,000, and that Mr. Richard Cauley was only able to change the word "agree" to  
17 "acknowledge", i.e., we did not agree but acknowledge that the damages caused to Activision  
18 were in excess of \$750,000.

19 5. In addition, my understanding is that the settlement agreements would be  
20 confidential and none of the parties is permitted to disclose the terms of the settlement  
21 agreement, and, thus, I believed that such acknowledgment of damages would not and could not  
22 be used by Activision as evidence against any of the other defendants.

23 6. John Tam and Corey Fong invited me to join the new venture and I only agreed to  
24 **consider** joining the new venture. Due to my heavy traveling and work load and my poor health,  
25 I hardly did anything for the planned new venture. However, due to my poor health and lack of  
26 financial ability, I had no choice but to settle to get out of the legal situations, and to stop the  
27 legal bills from adding up.

28 7. I have been unemployed since being fired by Activision, and currently have the

1 following assets:

2 a. I currently have approximately \$35,000 in the bank across checking and  
3 savings accounts. In addition to my need to The little money I have in the bank accounts will  
4 drastically change, if I have to further deal with the legal issues. Any more big hits from legal  
5 bills or other things can quickly deplete the amount in my checking & savings accounts. I was  
6 informed that not only TAC, Hong Lip Yow and Raymond Yow filed the opposition to our  
7 motion, but also Reverb Communications, Inc. and Douglas Kennedy.

8 b. I own a house with a value of approximately \$400,000 and a loan Balance  
9 of approximately \$375,000. The monthly mortgage payment is approximately \$1,700.

10 c. I own some shares of stock of Activision with a current value of  
11 approximately \$17,000.

12 8. The only major debt I still have is the house mortgage with a balance of  
13 approximately \$375,000.

14 9. Due to constant business travel between the US and China and long working  
15 hours, I have been seeking medical help for my neck and back problems since October, 2006.  
16 My neck and back problems cause me breathing difficulty, chest pain and neck/back/lower back  
17 pain. Other then medication, the doctor ordered me to do physical therapy 2 to 3 times a week.  
18 However, as the result of the firing, I lost my health insurance, and the attorneys' bills quickly ate  
19 away my savings. I had to stop all my medical treatments in the US. In order to continue my  
20 medical treatments at reduced financial burden, I decided to move to Taiwan temporarily to stay  
21 with my mother and get medical care and treatments because the medical treatments are much  
22 cheaper in Taiwan.

23 10. My monthly expenses are: (a) approximately \$1,700 for house mortgage, (b)  
24 approximately \$500 for property taxes, (c) approximately \$300 for insurance, (d) \$350 for HOA,  
25 (e) approximately \$300 medical bills in Taiwan, and (f) approximately \$1,000 for other overall  
26 living expenses, totaling at least \$4,150. My current savings are only enough to last for 7 to 8  
27 months.

28 11. I did earned some shares of the RedOctane stock. I sold the stock and received



1 approximately \$170,000 in June 2006. The money was used mostly to pay attorneys' fees,  
2 Activision settlement payments, my 2nd house mortgage and my daily living expenses.

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct.

5 Executed on August ~~11~~<sup>12</sup> 2007, at Taipei, Taiwan.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
\_\_\_\_\_  
Jamie Yang



1 I, Yee-Horn Shuai, declare and say:

2 1. I am an attorney licensed to practice law in the State of California, and the  
3 attorney of record for defendants John Tam, Corey Fong and Jamie Yang.

4 2. This declaration is made upon my own knowledge and if sworn as a witness, I can  
5 competently testify to the truth of the facts set forth herein.

6 3. Before filing the Tam Defendants' motion for good faith settlement  
7 determination, I talked to Mr. Trevor Zink, the counsel for Reverb Communications, Inc. and  
8 Doug Kennedy on more than one occasions and, on each occasion, he indicated that Reverb  
9 Communications, Inc. and Doug Kennedy would not oppose my clients' motion for good faith  
10 settlement determination.

11 4. On or about June 8, 2007, I notified Mr. Mike Oswald, the counsel for the ACT  
12 Defendants, and Mr. Trevor Zink, the counsel for Reverb Defendants, Tam Defendants' intent to  
13 seek good faith settlement determination and invited them to join in a stipulation for a mutual  
14 waiver of any possible indemnity and contribution claims against each other. Mr. Oswald  
15 rejected the idea, and repeated his threat that, "We do intend to seek indemnity from Tam, Fong  
16 and (perhaps) Yang." A true and correct copy of the email is attached hereto labeled Exhibit  
17 "G".

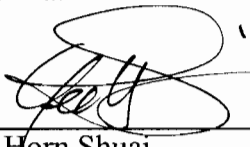
18 5. Had the TAC Defendants' counsel not repeatedly threatened to seeking indemnity  
19 from the Tam Defendants, the Tam Defendants would not have filed the motion for good faith  
20 determination. Had the Tam Defendants not filed the motion for good faith determination, none  
21 of the other defendants would have known the terms and conditions of said confidential  
22 settlement agreements.

23 6. On or about August 9, 2007, I was quite surprised to receive the opposition papers  
24 of the Reverb Defendants. I called Mr. Zink to find out the reason for the about-face. He gave  
25 me few reasons and the main reason is that he had expressed to Mr. Oswald his clients' desire to  
26 work with the TAC Defendants to negotiate a global settlement with Activision, and that,  
27 however, the Mr. Oswald simply ignored his requests and failed to include the Reverb  
28 Defendants in the negotiation of the settlement agreement. Mr. Zink said that, in fact, he found

1 out after the TAC Defendants and Activision reached the settlement agreement that Activision  
2 had told Mr. Oswald that Activision would settle with both the TAC Defendants and the Reverb  
3 Defendants for an amount that is about \$75,000 more than the \$250,000 amount settled between  
4 the TAC Defendants and Activision.

5 I declare under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct.

7 Executed on August 16, 2007, at Pasadena, California.

8   
9 \_\_\_\_\_  
10 Yee-Horn Shuai